

SEP 15 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES R. RUNYAN,

Defendant - Appellant.

No. 02-30356

D.C. No. CR-02-05121-FDB

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Franklin D. Burgess, District Judge, Presiding

Submitted September 10, 2003**
Seattle, Washington

Before: THOMPSON, HAWKINS, and BERZON, Circuit Judges.

Defendant-Appellant James Runyan (“Runyan”) stopped his pick-up truck on
a military base. A police officer approached him, suspecting he might be about to

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or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

**This panel unanimously finds this case suitable for decision without oral
argument. See Fed. R. App. P. 34(a)(2).

engage in illegal dumping. Runyan does not deny that this initial investigative stop was justified. He does argue under Terry v. Ohio, 392 U.S. 1 (1968), however, that a subsequent license check was improper because the initial reasonable suspicion of dumping should have been dispelled by Runyan's explanation.¹

Runyan's explanation, however, did not fully explain the presence of debris in his truck, nor did it dispel the suspicion that Runyan was trespassing on a military base.² Runyan's further argument that license checks may only be conducted after stops for traffic violations similarly fails for lack of support in the case law.³

Runyan also claims that the search of his person was unlawful because there was no custodial arrest.⁴ Whether a detention is a custodial arrest depends on the totality of the circumstances. United States v. Del Vizo, 918 F.2d 821, 824 (9th Cir.

¹Under Terry, a stop that is justified at its inception must also be reasonably related in scope to the purpose of the stop. Id. at 20.

²Mere unauthorized presence on a military base is a crime in and of itself. See 18 U.S.C. § 1382; C.F.R. § 552.87(c)(1), (g).

³Runyan cites United States v. Lockett, 484 F.2d 89, 90-91 (9th Cir. 1973) (per curiam), which held that a license check was improper where an officer stopped an individual for jaywalking. However, there is nothing in the language of Lockett to indicate that its holding was based on the fact that jaywalking is a "non-driving offense."

⁴An officer making a lawful custodial arrest may search an arrestee without a warrant, even if the arrest is for a minor offense. United States v. Robinson, 414 U.S. 218, 224, 234-35 (1973).

1990); see also Allen v. City of Los Angeles, 66 F.3d 1052, 1056-57 (9th Cir. 1995).

Runyan was told he was “under apprehension,” was handcuffed, read his rights, and transported in the police car. Thus, the totality of circumstances indicate that Runyan was not free to leave and was under arrest. Hence the search incident to arrest was valid.

AFFIRMED.